Filed 3/10/09 P. v. Munoz CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. ELIAS IVAN MUNOZ, Defendant and Appellant.	B205117 (Los Angeles County Super. Ct. No. PA055243)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ronald S. Coen, Judge. Affirmed.

Gordon S. Brownell, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Jason C. Tran and Roy C. Preminger, Deputy Attorneys General, for Plaintiff and Respondent.

The jury found defendant Elias Munoz guilty of the first degree murder of Adin Godoy (Pen. Code, § 186, subd. (a)),[1] finding the murder was committed to benefit a criminal street gang (§ 186.22, subd. (b)(1)). Allegations that a principal used a firearm in the commission of the murder were also found true (§ 12022.53, subds. (b)-(e)). Defendant received a sentence of 50 years to life, consisting of consecutive terms of 25 years to life for the substantive offense and for the firearm enhancement. Additional firearm enhancements were stayed pursuant to section 664, and the gang enhancement was dismissed. (§ 12022.53, subd. (e)(20).) In his timely appeal, defendant contends that introduction of his tape-recorded admissions made in two custodial interrogations violated the due process requirements of the Fifth and Fourteenth Amendments to the federal Constitution because those admissions were induced by promises of leniency and were therefore involuntary. We affirm.

STATEMENT OF FACTS

In February 2006, Carlos Pedroza lived in a second floor apartment which had a balcony overlooking Rayen Street. Pedroza arrived home in the early morning hours of February 11 and parked on Rayen Street in front of the apartment building. On the way to his apartment, he walked past two male Hispanics with shaved heads, who were standing in front of the apartment building and appeared to be drinking. While sitting in the living room watching television, Pedroza heard a vehicle's tires squealing to a stop, followed by a loud argument involving two male voices, and four or five gunshots. Pedroza then heard talking, the sound of persons entering a vehicle, the noise of a vehicle's engine, and the squealing of tires as the vehicle drove away.

Pedroza went to the balcony window and saw a dark four-door car exit the driveway of the apartment across the street and stop in front of his apartment on Rayen.

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[1] All further statutory references are to the Penal Code unless specified otherwise.

The same two males who had been standing across the street got into the car with one or two other males before the car sped away. Pedroza went downstairs to the front of his apartment building. He spoke to the security guard standing on the sidewalk, who directed him to another person—victim Godoy—on the street, lying prostrate beside a parked sports utility vehicle. Godoy had a bullet wound in the back of his head. The guard used his cell phone to call for an ambulance. Pedroza went back to his apartment.

Godoy lived on the same city block where he was killed, in territory claimed by the Langdon Street gang. Godoy was a member of the Mara Salvatrucha (MS) street gang, a rival of Langdon Street. The murder occurred at approximately 3:18 a.m. Los Angeles Police Department Officer Efren Gutierrez arrived at the scene at 5:30 a.m. He saw expended bullet casings around Godoy's body. There was a cell phone underneath the SUV, along with a baseball cap and numerous empty beer bottles strewn nearby. There were a number of beer bottles in front of the apartment building across the street from the victim's body.

Medical Examiner Susan Selser determined that Godoy suffered two fatal bullet wounds that entered the back of his head. He had also suffered blunt force trauma to the back of the head, independent of the gunshots, along with abrasions to the side of his head, his knees, elbows, back, hand, and wrist. Godoy had various tattoos, including "MARA SALVATRUCHA" tattooed on his back.

Detective Nicole Kittle testified that she and her partner, Detective John Fleming, interviewed defendant at the police station on March 14, 2006. The interview was recorded without defendant's knowledge. The audiotape was played to the jury, as was the audiotape of defendant's subsequent interview with Detective Kittle and Officer Gutierrez on May 10, 2006.[2] In the first interrogation, defendant denied being present at the shooting incident, but admitted to possessing the firearm that was proved to be the

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[2] We summarize the contents of both interviews *infra* in connection with our discussion of defendant's claim.

murder weapon. In the second, he admitted being present at the shooting. He gave the loaded handgun to a person called Tiny, after Tiny made a gang threat to Godoy, just before the shooting occurred.

At the first interview's conclusion, the detectives accompanied defendant to his apartment, where defendant showed them the gun he had referenced in the interview. It was a .32 caliber automatic, found in his mother's bedroom nightstand or desk in a concealed compartment. There were bullets in the gun's magazine. A criminalist determined that the bullets and casings found at the murder scene had been fired from that same handgun. Other items recovered from the apartment included a black handkerchief, a notebook entitled, "Langdon Private Book Lil Gumby' Shit," a box labeled, "Gumby," "Langdon," "Langdon 13," "Pee-Wee," and "Street."

Sergeant Robert Nakamura of the Los Angeles Police Department and his partner were in an unmarked patrol vehicle on March 14, 2006, in Langdon Street territory. He saw a Toyota Camry driving westbound on Rayen Street near Sepulveda Boulevard. The driver and two passengers were male Hispanics with shaved heads. The Camry stopped and defendant stepped onto the street, approached the passenger side, and spoke to the occupants. Within a short time, defendant entered the back seat and the car drove away. The officers followed. Sergeant Nakamura saw defendant flash a Langdon Street gang sign with his hand in the direction of a number of male Hispanics standing in front of an apartment building. The officers stopped the Camry. In addition to defendant, the occupants included Langdon Street gang member Juan Carrillo (also know as Little Youngster and Tiny).

After the murder, Officer Gutierrez observed gang graffiti painted on a storage shed near the murder scene, referring to Godoy's killing. The graffiti mentioned Langdon Street and crossed out the victim's initials and the initials of his gang. The prosecution's gang expert testified that she examined the graffiti and opined that it showed Langdon Street's antipathy toward MS.

Jesse Pahua was in custody for disregarding a warrant to appear in defendant's trial. He had been a member of Langdon Street since he was 12 years old, but he quit six years later in August 2006, when his daughter was born. At that time, the gang had approximately 40 members. His gang moniker was "Silent." Defendant was a member with the moniker, "Lil Gumby." Pahua denied any knowledge of a gun being found after the Godoy killing. When interviewed by Detective Kittle and Officer Gutierrez on May 3, 2006, he told them that the firearm recovered from defendant's residence was the same gun defendant had shown him previously at defendant's residence.

A criminalist examined fingerprints on beer cartons found at the crime scene. He found matches to James Reyes. Fingerprints on beer bottles and cans from the crime scene resulted in matches to Walter Martinez and Oscar Murillo. There were no identifiable prints on the .32 caliber handgun.

Officer Shawna Green testified as an expert in criminal street gangs, specializing in the Langdon Street gang. In February 2006, the gang had approximately 200 documented members. The murder scene was located in the middle of the gang's territory. MS is an enemy or rival gang. Langdon Street's primary activities are committing a variety of crimes, including narcotics sales and murders. Defendant was an active member of the gang with the moniker, "Lil Gumby." The written materials recovered from his residence following his arrest tended to show his affiliation with Langdon Street. Also recovered were photographs of defendant and fellow gang members Luis "Tiny" Martinez , Juan "Lil Youngster" Carrillo, Frank Angel "Troubles" Castrellon, and James "Jimmy" Reyes. The expert testified that Jesse "Little Silent" Pahua, Oscar "Dopey" Garibay, Oscar "Loco" Murillo, Walter "Little Puppet" Martinez, and Osmin Rodriguez are members of Langdon Street. Officer Green testified as to the commission of predicate crimes for purposes of the criminal street gang allegations.

Answering a hypothetical question that reflected the prosecution's evidence concerning the Godoy shooting, which incorporated some of defendant's admissions from his second interview, Officer Green opined the shooting would have been committed for

the benefit of the Langdon Street gang because it demonstrated its willingness to kill gang rivals who ventured into Langdon Street territory.

Defense

Saemm Gonzales, the cousin of prosecution witness Evelyn Gonzales, testified that Evelyn and defendant were dating in March 2006. Defendant would periodically stay overnight at the Gonzales residence. On the night of the Godoy killing, defendant attended a family party. They did not return until approximately 3:00 a.m. The streets around the murder scene were blocked off because of the police investigation.

Defendant testified that he grew up and lived in Langdon Street territory. Defendant was a member of the Langdon Street gang. None of his tattoos is gang related. He was dating Evelyn around the time of the Godoy killing and is likely the father of her child.

In the months leading up to the Godoy killing, defendant was staying either with Evelyn at her residence on Rayen Street or at his mother's home. On the night of the shooting, he went to a party with Evelyn's family. They all drove home in the same car. On the way home, at approximately 3:00 a.m., he noticed an ambulance and police activity in the area of the murder. Because nearby streets were closed by the police, they had to take an alternative route to Evelyn's apartment, where he slept. That morning, Evelyn left on a trip and he took their child. He assumed a Langdon Street gang member had been shot. Defendant walked to the crime scene and asked some neighbors what had happened. He was told, "Somebody was killed."

As his part-time employer did not call him to work that day, he remained at Evelyn's residence. A few days later, he was "kicking it with a couple friends"—two Langdon Street members and two young women. One of the males, Marcos or "Snoop," pulled out the gun and told defendant to "hold it." Not wanting to "look like a sissy," he took the weapon, although he did not know it had been used in the Godoy shooting. Prior

to his arrest in March, he showed the gun to Jesse "Silent" Pahua, who advised defendant to "keep it where you have it."

During the police interview, defendant misled the officers about the source of the gun because he was afraid of retribution from the gang. He had no firsthand information about the killing. When he was arrested and taken to the police station for questioning in May, he was very tired and could barely hold his head up. During the interrogation, Detective Kittle was respectful and nice; Officer Gutierrez was mean and aggressive. When Detective Kittle was out of the room, Officer Gutierrez was screaming at him. He told defendant he would never see his children again, unless he told the officer what he wanted to hear. At that time, defendant's son was four days old. Defendant was not drinking beer with any Langdon Street members before the Godoy shooting, he did not give the gun to Tiny, he was not present during the shooting, and he did not flee with the shooters. On cross-examination, defendant said he gave the officers the false story that he handed the gun to Tiny just before the shooting because defendant believed the officers would let him go home if he was not the shooter.

DISCUSSION

Defendant contends the trial court prejudicially erred in denying his motion to suppress the admissions he made in the custodial interrogations of March 14 and May 10, 2006, because those admissions were coerced by promises of leniency and therefore were involuntary, in violation of the due process requirements of the Fifth and Fourteenth Amendments to the federal Constitution. As we explain, our independent review of the totality of the circumstances demonstrates that defendant's inculpatory statements were made voluntarily, without any improper promises, threats, or coercion by the detectives.

The Suppression Hearing

The trial court began the hearing by stating that it had listened to the audiotapes and read the accompanying transcripts of the subject interrogations.[3] We provide the following summaries.

On March 14, Detectives Kittle and Fleming questioned defendant. At the session's start, defendant asked whether he was "going to jail today?" Detective Fleming explained that defendant had been arrested for violating an anti-gang injunction. Defendant denied that he was subject to the injunction. Detective Kittle said, "Let's see what happens here, and we'll go back downstairs and we will talk to the patrol officers. We'll do our best, okay?" Defendant responded, "That's fine." Detective Kittle added that they could not "make any promises, but we will do our best." Again, defendant said, "That's fine."

After defendant waived his *Miranda* rights,[4] he was asked some preliminary questions, before Detective Kittle focused the discussion on the "shooting that happened on Rayen." Defendant asked whether providing information about that incident would "help [him] out or anything." Detective Kittle said it would, but did not say how. Defendant told the detectives that Little Youngster, one of the others picked up with defendant that day, had "something to do with it." Defendant explained that Little Youngster and others "hit [the victim] up" a week before the shooting. When the victim returned to the neighborhood a week later, Tiny, Troubles, and Little Youngster "got [the victim's] head." They "busted a drive-by on him." Defendant said he heard about this drive-by shooting from his cousin, Jesse Mendoza, and some girls in the neighborhood. He had not heard who the shooter was and did not know which gang car was used. The

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3 The transcripts of both interviews were introduced in evidence at the hearing and made a part of the appellate record.

4 *Miranda v. Arizona* (1966) 384 U.S. 436.

gang used three vehicles at that time, a blue Honda (the vehicle defendant was in when arrested), a gray van, and a blue Astro van. Defendant was not present at the shooting. He and Mendoza were at a family reunion party at the time of the shooting.

Defendant again asked the detectives whether his information would "help [him] out any way"—apparently meaning whether it would help him get out of custody to see his children. Detective Kittle responded that she hoped it would, adding, "our goal here is to solve a murder, and your goal is to go home to your baby; right?" Defendant agreed. "So, as long as we both get what we want, we're all going home." The detective added that she will "be straight up with" defendant, but she wanted him to tell her "everything she needs to know." Defendant said he would tell them whatever they want to hear in order to get to home.

As the discussion continued, defendant said that Tiny, Troubles, and Little Youngster dropped a gun while running away from the police after the murder. A friend of defendant's cousin, Esmeralda Rodarte, found the gun and gave it to defendant, who was keeping it in a locked box at his mother's house.

Regarding the shooting and the events leading up to it, defendant added more details. A week before the shooting, the victim (a member of the Mara Salvatrucha gang) was walking in the neighborhood by Rayen Street. Little Youngster and Lizard "hit him up" for trying to buy drugs there and reported the incident to "the big homies," Tiny and Troubles. A week later, they saw the "the same fool" walking in the same location. Tiny, Troubles, and Youngster got into the baby blue van and "lit him up. The guy tried to hide under the car, but those fools got . . . off the car and finished him off right there." Defendant confirmed that the shooters wore ski masks covering their faces. There were a lot of neighbors outside at the time. Defendant related the manner and direction of the shooters' flight in detail. He said he knew the neighbors who were there and received his information from them.

After defendant identified Trouble and Tiny from photographs, Detective Fleming asked him to go over his knowledge of the murder again. Among other things, defendant

said that after being shot, the victim tried to run, but "crumpled" under a Ford Expedition. He learned the details about the murder from the woman who sold food from the catering truck at the scene. He spoke to her the following morning, when he stopped to pick up lunch for his children on the way to school. She apparently heard from "[s]ome lady that lives in the second floor" of the apartment building looking over the shooting scene. Defendant denied he was at the location at the relevant time.

As defendant divulged additional details about various aspects of the shooting, Detective Kittle told him that he had heard defendant had been bragging about being at the shooting scene—"not necessarily that you were the one that pulled the trigger, but that you were there." Again, defendant denied it, but Detective Fleming insisted that "somebody" said defendant witnessed the shooting and that was why the police stopped him and brought him in for questioning. Detective Kittle told defendant: "If you didn't pull the trigger . . . then you're not going to go down for this. If you were there . . . and you saw what happened. And you don't tell us. The courts can hold you responsible. I'm not saying they will . . . I'm just saying that they can." Defendant said he understood. Detective Kittle explained that she did not "want that to happen" to defendant because he had "two little ones at home and . . . one on the way," but she needed to resolve where he was and what he saw concerning the murder "[s]o that we're clear in our minds that you were not the one that actually killed that guy." Defendant insisted that he told them everything he knew.

The detectives told defendant that he had given them details he would know only if he had witnessed the murder. Detective Fleming said "it's not going to look good" for defendant because another person said defendant was "out there when it happened," and defendant knew so many details about the shooting—and it was likely the murder weapon would be found in his residence. Detective Kittle said defendant could not trust his gang friends to help him and it would be a mistake to withhold information to protect them. Again, defendant denied witnessing or taking part in the killing. Detective Kittle told him, "I don't want to see you get swept up into something . . . [t]hat you're going to

regret for a really long time. . . . I don't want to see you get separated from your kids for [a long] time. That's just not worth it." Detective Kittle added she was "not going to pull a fast one on" defendant, but she believed he was at the shooting scene. She told him that she had been informed he was called "Little Gumby" and he was bragging about being there with Tiny. Again, defendant denied having that moniker and being at the scene.

Defendant had been released from custody sometime after the first interview. The second interview took place on May 10, 2006. Detective Kittle and Officer Gutierrez were the interrogators. Detective Kittle loosened defendant's handcuffs and asked if he was tired. Defendant said he had been up late the previous night and early morning. Officer Gutierrez was introduced to defendant. He confronted defendant and accused him of lying in the first interview about not being at the shooting scene. Defendant replied that he stood by his previous statements. Defendant waived his *Miranda* rights. The officers explained the purpose of the interview was for defendant to explain what they believed were misrepresentations on defendant's part during the first interview. Detective Kittle insisted: "All I want is the truth from you." She was convinced his prior interview statements were false, but would "start from scratch . . . . And the only way that this discussion is going to go in any fashion favorably towards you, is if you tell me the truth. If you start to waiver from the truth, all you're going to do is dig yourself a hole." She added that she was "not [his] enemy here at all."

Detective Kittle told defendant that she had interviewed the persons he mentioned in his story about finding the gun—and they refuted his version of events. His story was proved to be full of "holes" and a search of his apartment had uncovered the murder weapon, which led her to believe that he was the shooter. Officer Gutierrez said, "You're looking pretty good for it, man," and defendant agreed that it appeared that way. Detective Kittle told defendant, "I need you to tell me the truth so that I can help you. Otherwise you're looking at going to jail for the rest of your life. And you're a young guy. You got a baby. You got a future ahead of you." The detectives made it clear that if he remained silent out of gang loyalty, he would likely be convicted of murder—so, "if

you didn't shoot, you better say who did it." If defendant wanted to go home, he needed to "start talking."

Defendant responded, "I'm not holding out. Those three guys that I told you before, those are the shooters." Detective Kittle countered that they, however, did not match the description of the shooter—defendant did. At that point, defendant said that Tiny pulled the trigger, and he related a version of the events in which he participated: defendant, Tiny, Troubles, Dopey, and Little Youngster were intoxicated when the victim walked by them. Troubles said he recognized that "fool from MS." Tiny "hit him up," asking, "Where you from?" The victim identified himself as Mara Salvatrucha, showing disrespect. Tiny responded, "Fuck monkey shit." Tiny said "we don't get along with them," which defendant claimed was news to him. At that point, defendant had the gun in his pocket. Tiny demanded it from him and he handed it over. At first, defendant refused, but Dopey and Troubles "jumped" him. It was approximately 2:30 a.m. They got into the grey van, with Youngster driving and defendant in the back seat. Tiny shot at the victim from the car and "emptied a whole clip on him." Defendant left the scene on foot. Two days later, he took the gun back from one of the others.

The detective told him she was "proud" of him for telling her. "You're doing the right thing. I understand that you're scared. You got a family at home . . . . You are doing the right thing. . . ." She asked him to describe what he and the others were wearing at the time of the shooting incident, which he did in detail, before adding additional details to his description of the shooting. She continued: "You're in a really bad spot." Defendant agreed. She continued: "And I'm not wanting to put anybody in jail that doesn't deserve to be there." Again, defendant said he understood. The detective said she needed him to describe "everything in detail so that I know that you're not the one that did it. Right now, I'm not a hundred percent sure. Things aren't adding up." Defendant gave additional details concerning the incident, for instance that he had loaded the gun and he heard nine shots fired. The interview continued, with Officer Gutierrez insisting defendant was not telling the whole story.

They took a break and when they recommenced, defendant referred to someone—apparently Officer Gutierrez—as having screamed at him. He told the detectives: "I just want to know what you guys want me to tell you guys. What do you guys want from me? I just want to get all this shit over with and you guys want to know whatever you guys want to know I'll tell you. I just want to get home to my family." Detective Kittle replied, "The only thing . . . I want from you is the truth." She told him he looked "really nervous." Defendant said it was because he was thinking of his children, and he did not want to "go to jail for something [he] didn't do." The detective said, "That's why I'm giving you the opportunity to talk to me." Defendant protested that he was not holding back information and that, at great risk to himself, he had identified the shooter—Tiny—and would do so in court, under oath.

The detective told him "as long as you tell the truth, okay? We can't guarantee that you won't go to jail today. . . . Because you—you probably will go to jail today to give us time to sort through all of this. . . . But . . . a little bit of time in jail is a lot better than the rest of your life." Detective Kittle asked why would other witnesses "put [his] name out there" as the shooter? Defendant insisted that Tiny was the only person who fired a gun during the incident. Defendant added that the victim did nothing to provoke the shooting. Detective Kittle told defendant she could not make "any promises today," but she would not "screw [him] over." The investigation would continue and "the person that pulled the trigger is going to ultimately be held responsible. But for right now during our investigation everybody that was involved is going to be looked at." Officer Gutierrez made it clear he believed defendant was the shooter.

Detective Kittle said she understood that defendant might be angry at her because he was not being released, but "a short amount of time in jail is a lot better than you spending the next 60 years." It might be a few days or a few weeks. Defendant said, "I didn't do no crime and I'm going to jail . . . that's the thing I don't understand"—that is, why was he to remain in custody, despite telling them "everything" he knew? Defendant asserted it was "wrong" to treat him that way. Officer Gutierrez continued to insist

defendant was "holding back." The officer asked why defendant did not leave since he knew "they were going to kill this . . . guy." Defendant said, "Yes, I did I . . . ." Officer Gutierrez explained that the way he and Detective Kittle understood defendant's statements. Defendant had the gun and gave it to one of his "homies," knowing it was likely he would use it to "blast" the victim. As such, he was not innocent. The officer did not know what defendant's punishment would be, but he did not think defendant "deserve[d] a free pass" and defendant had no reason to ask for one. "The only thing you can do is rectify it by doing the right thing now"—by telling the officers the full extent of his involvement. The interview concluded when defendant asked about bail, and Detective Kittle said it would be "a million dollars."

Detective Fleming testified that during the course of the March 14 interview, he came to believe defendant was present at the shooting. Despite defendant's denials, his description of the events sounded like those of an eyewitness. Detective Fleming denied defendant was promised that "if he was honest about what happened that he would not spend the rest of his life in prison." Nor was defendant promised, explicitly or implicitly, that he would be released from custody if he told the truth. Detective Fleming did not intend to make such a representation to defendant. With regard to representations at the beginning of the interview, the detectives told defendant that if he truly was not a gang member, he would not go to jail for a violation of the gang injunction. As the interview progressed and the discussion focused on the murder, Detective Fleming had no intent to cause defendant to believe that his statements would lead to a release from custody. Rather, the detective could not "make him any guarantees."

Detective Kittle testified about her role in both interviews. At the initial interview, she did not know whether defendant played a role in the shooting. The detective recalled that during the interview defendant's concern was to get out of custody. She told him that if he gave information about the shooting, she "would work with him." She was gathering information about the crime without any knowledge that defendant was a participant. Later, however, after defendant made the disclosure about possessing the

murder weapon, she began to suspect otherwise. Detective Kittle told defendant that if he witnessed the shooting but had not "pulled the trigger," he was "not going to go down for this." Her point was that if he was merely a witness, she would not consider him as a suspect. She was gathering information and trying to find out, among other things, whether he was an accomplice.

At some point during the second interview, she concluded defendant was lying about the extent of his involvement, so that she considered him a suspect. That was the case when she told him to tell the truth so she could "help him, otherwise he was looking [at] going to jail for the rest of his life." Toward the end of the second interview, she told defendant that she could not make "any promises" and would not "screw him over." With regard to the demeanor of Officer Gutierrez during the interview, Detective Kittle recalled the officer raised his voice forcefully, but he remained seated and did not yell at defendant. Defendant was released from custody after the first interview.

Officer Gutierrez testified that he took part in defendant's second interview, along with Detective Kittle. The May 10 interview began at 11:00 a.m. Officer Gutierrez was aware defendant had been arrested in a traffic stop and previously interviewed by Detectives Kittle and Fleming. Officer Gutierrez believed defendant had lied in the prior interview with regard to various matters, including his denial of being present during the shooting. Officer Gutierrez did not recall whether defendant appeared tired during the interview. He and Detective Kittle did not discuss making "promises of freedom" to defendant "if he were to tell . . . the truth about what happened." At various times during the interview, the officer told defendant he thought he was lying, but the officer did not consider it a "hard style interview." He may have raised his voice to defendant, but he did not recall screaming at him, nor did he recall another officer doing so.

Defendant did not testify at the hearing.

After the conclusion of testimony, the defense noted that defendant's main concern during both interviews was getting out of custody. According to the defense, Detective Kittle exploited his desire to be released and made a "specific promise" to defendant in

the second interview, when she told him that spending a short time in jail would be better than a long time and then specified that it "could be a couple of days. It could be a couple of weeks." The gist of the argument was that under all the circumstances—Officer Gutierrez's threatening demeanor and statements, combined with Detective Kittle's reassuring demeanor and promises of release if he gave information—the interrogation was unduly coercive.

The trial court found no coercive activity by the police and no evidence that defendant had an expectation of being released in the second interview. The court reasoned that defendant's situation was similar to that in *People v. Williams* (1997) 16 Cal.4th 635, where promises of leniency did not render the defendant's admissions involuntary because the officer's promises did not motivate the defendant's inculpatory statements. To the extent Detective Kittle's statement concerning the amount of time defendant would spend in custody could be understood as a promise of leniency, the court found it was made after defendant made his damaging admissions.

Analysis

"[W]e review independently the trial court's legal determinations of whether a defendant's statements were voluntary [citation] . . . . We evaluate the trial court's factual findings regarding the circumstances surrounding the defendant's statements and waivers, and '"accept the trial court's resolution of disputed facts and inferences, and its evaluations of credibility, if supported by substantial evidence."' [Citations.]" (*People v. Rundle* (2008) 43 Cal.4th 76, 115, disapproved on another point in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) "A defendant's statements challenged as involuntary are inadmissible at trial unless the prosecution proves by a preponderance of the evidence that they were voluntary. [Citations.] 'The due process [voluntariness] test takes into consideration "the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation."' (*Dickerson v. United States* (2000)

530 U.S. 428, 434, quoting *Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 226.) This test 'examines "whether a defendant's will was overborne" by the circumstances surrounding the giving of a confession.' [Citation.]" (*People v. Guerra* (2006) 37 Cal.4th 1067, 1093.)

A finding of involuntariness must be predicated on coercive police activity. (*Colorado v. Connelly* (1986) 479 U.S. 157, 169-170; *People v. Maury* (2003) 30 Cal.4th 342, 404.) Such coercion may take the form of physical violence, verbal threats, direct or implied promises of leniency or other rewards, or any other improper influence. (*People v. Benson* (1990) 52 Cal.3d 754, 778.) The fundamental question is whether the coercive activity proximately caused defendant's will to be overborne. (*People v. Jones* (1998) 17 Cal.4th 279, 296.)

Defendant argues that promises of leniency by Detective Kittle, coupled with threatening behavior by Officer Gutierrez, rendered his admissions involuntary.[5] "It is well settled that a confession is involuntary and therefore inadmissible if it was elicited by any promise of benefit or leniency whether express or implied. [Citations.] However, mere advice or exhortation by the police that it would be better for the accused to tell the truth when unaccompanied by either a threat or a promise does not render a subsequent confession involuntary. [Citation.] The distinction that is to be drawn between permissible police conduct on the one hand and conduct deemed to have induced an involuntary statement on the other 'does not depend upon the bare language of inducement but rather upon the nature of the benefit to be derived by a defendant if he

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5 The Attorney General asserts defendant forfeited any claim based on Officer Gutierrez's alleged threatening behavior because defendant did not specifically mention the challenged behavior below. We, however, agree with defendant that Officer Gutierrez's allegedly coercive conduct was fairly presented to the trial court at the suppression motion hearing. Trial counsel argued that the coercion consisted in the combined effects of the officer's behavior in yelling at defendant and the detective's relatively sympathetic demeanor and alleged promises of leniency. The trial court's ruling adverted to both of those aspects of defendant's argument.

speaks the truth as represented by the police.' [Citation.] Thus, '[w]hen the benefit pointed out by the police to a suspect is merely that which flows naturally from a truthful and honest course of conduct,' the subsequent statement will not be considered involuntarily made. [Citation.] On the other hand, 'if . . . the defendant is given to understand that he might reasonably expect benefits in the nature of more lenient treatment at the hands of the police, prosecution or court in consideration of making a statement, even a truthful one, such motivation is deemed to render the statement involuntary and inadmissible . . . .' [Citations.]" (*People v. Jimenez* (1978) 21 Cal.3d 595, 611-612, overruled on another point in *People v. Cahill* (1993) 5 Cal.4th 478, 510, fn. 17.)

Resolution of this appeal turns on the "crucial distinction . . . between simple police encouragement to tell the truth and the promise of some benefit beyond that which ordinarily results from being truthful." (*People v. Vasila* (1995) 38 Cal.App.4th 865, 874 ["the investigators went beyond encouragement and both expressly and impliedly promised additional benefits to defendant if he told them where the guns were hidden"—promising not to institute federal prosecution and to release the defendant on his own recognizance]; compare *People v. Hurd* (1998) 62 Cal.App.4th 1084, 1091 ["none of the detectives' statements indicated that the district attorney would act favorably in specific ways"]; *In re Shawn D.* (1993) 20 Cal.App.4th 200, 215-216 [telling the defendant his honesty and cooperation would be noted in the police report and that the officer would speak to the district attorney about whether he would be tried as an adult].)

With regard to the March 14 interrogation, defendant's key statement was his admission to possessing the firearm that turned out to be the murder weapon. Otherwise, defendant consistently denied being present at the Godoy shooting. There was nothing improper in the interrogation's initial interchange. When defendant asked whether he was to be incarcerated, not only did Detective Kittle make it clear the detectives could make no promises, but the trial court was entitled to credit Detective Fleming's testimony that the subject of their discussion at that point was whether the detectives would verify

defendant's claim that he was not subject to the gang injunction, which was the basis for his arrest.

We turn to the detectives' statements leading up to defendant's admission concerning his possession of the murder weapon. Initially, the fact that defendant waived his *Miranda* rights weighs against a finding of coercion. (Cf. *People v. McClary* (1977) 20 Cal.3d 218, 229 [police ignored the 16-year-old defendant's repeated requests for assistance of counsel].) Subsequently, in response to defendant's question whether providing information would be "helpful" to securing defendant's release, Detective Kittle merely said "yes" without specifying how. Defendant provided information concerning the shooting, but emphasized that he was not present at the shooting because he was at a family party. Defendant asked whether providing information would help him secure a release from custody. Again, however, Detective Kittle refused to promise any specific benefit. She wanted him to help her "solve a murder." Defendant's goal of going home to his family depended on his providing the truthful information she sought. As such, "[t]he interview in this case is better characterized as a 'dialogue or debate between suspect and police in which the police commented on the realities of [his] position and the courses of conduct open to [him]' [citation] than as a coercive interrogation." (*People v. Holloway* (2004) 33 Cal.4th 96, 116.) The discussion continued for 10 transcript pages before defendant made his admission concerning the murder weapon. As there was no improper police conduct—and any causal relationship between the challenged statements and defendant's admission were tenuous at best—we agree with the trial court's finding of voluntariness.

We turn to the second interview. At the start, it was made clear to defendant neither Detective Kittle nor Officer Gutierrez believed defendant's prior denials of being present at the shooting. As before, defendant was *Mirandized* before Detective Kittle emphasized that she wanted him to tell the truth "[a]nd the only way that this discussion is going to go in any fashion favorably towards you, is if you tell me the truth. If you start to waiver from the truth, all you're going to do is dig yourself a hole." Those "remarks

did not constitute a promise of leniency," but "only pointed out the benefit that might naturally flow from a truthful and honest course of conduct." (*People v. Ramos* (2004) 121 Cal.App.4th 1194, 1204; *People v. Boyde* (1988) 46 Cal.3d 212, 238 ["Mere advice or exhortation by the police that it would be better for the accused to tell the truth, when unaccompanied by either a threat or a promise, does not, however, make a subsequent confession involuntary"].)

Detective Kittle explained further that her investigation tended to refute his version of events. Both she and Officer Gutierrez told defendant the investigation pointed to him as being the shooter, and defendant said he understood. At that point, the detective said she could "help" him only if he told her the truth. "Otherwise you're looking at going to jail for the rest of your life." If he remained silent out of gang loyalty, he would likely be convicted of murder. Therefore, "if you didn't shoot, you better say who did it." That is, if defendant wanted to go home, he needed to "start talking."

We disagree with defendant's assertion that the detective was promising to release defendant if he identified the shooter. In context, the police were telling defendant that the available evidence pointed to him as the murderer, so if he was innocent as he claimed and someone in the gang was setting him up, it would behoove him to stop "holding out" and prove his innocence. Shortly after that, defendant offered the version of the shooting in which he was present as the person who gave the gun to Tiny—immediately after Tiny made the gang threat to Godoy and just before they entered the van to gun him down. Once again, there was no specific promise of leniency. Defendant's "going home" depended on proving to the police officers' satisfaction that he was innocent. As such, the detective's remarks merely implied the benefit that might flow naturally from a truthful and honest course of conduct. (See *People v. Holloway*, *supra*, 33 Cal.4th at p. 116.)

Detective Kittle applauded defendant for doing the "right thing" and implicitly held out the possibility that he might be released, but did not make a specific promise of leniency. The interrogation proceeded in the same vein, with the officers expressing their

doubts about defendant's story. When defendant reiterated that is was his sole desire "to get home to my family," Detective Kittle told him that she only wanted the truth from him. When he said he did not want to "go to jail for something [he] didn't do," the detective replied, "That's why I'm giving you the opportunity to talk to me." Again, there was no promise of leniency, but rather an adjuration to prove his innocence.

The questioning continued with Detective Kittle telling defendant that there would be no guarantee of his release from custody. Indeed, he would likely be placed in jail that day to give the officers "time to sort through all of this. . . . But . . . a little bit of time in jail is a lot better than the rest of your life." Defendant insisted that he was not the shooter. Detective Kittle repeated that she could not make "any promises today," but she would not "screw [him] over." The police would continue to investigate the matter to find the person responsible, but until then "everybody that was involved"—which would include defendant—"is going to be looked at." Officer Gutierrez made it clear he believed defendant was the shooter.

At that point, Detective Kittle made the statement defendant argued below amounted to a specific promise of leniency. The detective said she understood defendant would likely be angry with her for not ordering him released, but "a short amount of time in jail is a lot better than you spending the next 60 years," adding that it "could be a couple of days" or "a couple of weeks." Defendant complained that she was being unfair because he had not committed a crime and had told the police everything he knew. But Officer Gutierrez insisted defendant was "holding back." He asked why defendant did not leave since he knew "they were going to kill this . . . guy." Defendant said, "Yes, I did I (inaudible)." Officer Gutierrez said that he and Detective Kittle understood defendant to be saying that he had the gun and gave it to his fellow gang member, knowing it would likely he used to "blast" the victim. Under that scenario, defendant was not innocent and should not go free. The interview concluded without any more admissions by defendant.

In light of everything that had previously transpired in the interrogation, the most reasonable interpretation of Detective Kittle's statement is that a release from custody within a "few weeks" depended on the results of the police investigation—and specifically, whether it exonerated defendant. As such, to the extent there was a promise of leniency, it was contingent on something entirely out of defendant's control. However, even assuming Detective Kittle improperly promised to have defendant released within a "few weeks" if he cooperated by providing additional information, we find the admission of his statement concerning knowledge of the shooter's intent would have been harmless beyond a reasonable doubt. (See *People v. Cahill, supra*, 5 Cal.4th at p. 510 ["whenever a confession admitted in a California trial has been obtained by means that render the confession inadmissible under the federal Constitution, the prejudicial effect of the confession must be determined under" the harmless-beyond-a-reasonable-doubt standard under *Chapman v. California* (1967) 386 U.S. 18, 23].) First, defendant's admission was ambiguous because the transcript did not record his entire answer and it is unclear whether, or the extent to which, he was agreeing with the officer's assertion. Second, defendant had previously admitted the crucial facts—he handed the loaded weapon to Tiny after Tiny made it clear beyond any serious doubt as to his intention of using the gun to shoot Godoy.

Finally, defendant argues consideration of other factors tends to show a lack of voluntariness. We disagree. "A determination of the voluntariness of a defendant's statements must be based upon the totality of the circumstances, including whether defendant was read and understood his *Miranda* rights, defendant's maturity, education and mental health, and any elements of coercion in the interrogation, the length of the interrogation, and its location." (*People v. Jenkins* (2004) 122 Cal.App.4th 1160, 1171, citing *Withrow v. Williams* (1993) 507 U.S. 680, 693; *In re Shawn D., supra*, 20 Cal.App.4th at p. 209 ["Characteristics of the accused which may be examined include the accused's age, sophistication, prior experience with the criminal justice system and emotional state"].) Defendant identifies no factor that showed him to be especially

vulnerable to coercion. He was 19 years old and had a juvenile and adult criminal history, albeit for relatively minor offenses. Further, as he told the officers during the initial interrogation, he had a criminal matter pending at that time. In short, he was no neophyte with regard to the criminal justice system. In addition, we defer to the trial court's findings that Officer Gutierrez's conduct did not coerce defendant's statements. The court listened to the audiotapes of the interviews and heard the officer's live testimony. As such, he was in the best position to make that factual determination.

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

MOSK, J.